

The complaint

Mrs M has complained that Hoist Finance UK Limited are pursuing her for a debt which she says she cleared through a debt management plan.

What happened

This complaint is about an unsecured loan from a business I'll refer to as "H". The loan started in 2005 and defaulted in 2007. In 2008, the loan was sold to a new owner I'll refer to as "C". Then in 2013, it was sold to Hoist – who were called Robinson Way at the time.

Mrs M had been in a debt management plan. In August 2013, her debt management company wrote to her to say that her plan had finished. They said they'd either settled each account or "challenged" it. They enclosed a statement.

Hoist have been pursuing Mrs M for the outstanding balance. Mrs M says this account was settled, whereas Hoist say it wasn't.

Our investigator looked into things independently and didn't uphold the complaint. They explained that the debt management company's correspondence showed that only some debts were settled, and it looked like this account was not one of them. Hoist's records showed that this account had only received a relatively small amount of repayments and had not been cleared or settled. They explained that Mrs M might want to complain about her former debt management company, and pointed her to their administrators.

Mrs M didn't agree, so the complaint was passed to me to decide.

I sent Mrs M and Hoist a provisional decision on 3 December 2021, to explain why I didn't think the complaint should be upheld. In that decision, I said:

I can understand why Mrs M might have thought this debt had been settled. The letter she was sent from the debt management company seems potentially misleading in that it says they've "resolved" all her debts and her plan is "complete".

But according to the attached statement, it looks like out of over £11,000 that Mrs M paid this debt management company, only about £1,300 was passed to her creditors. Almost £8,400 appears to have been taken by the debt management company in fees. Apparently, the rest was returned to Mrs M.

Given the amount that was passed to her creditors, and given that this debt was still over £16,600 by the time it got sold to Hoist, it's rather unsurprising that it did not get cleared.

I can see that some of Mrs M's accounts did get settled. And I appreciate that some of those accounts were also from the same original creditor (H) or the second debt owner (C), which may have led Mrs M to believe that this account was one of the ones that got settled. But having gone through the documents that Mrs M provided, none of the settled accounts seem to match the account details, reference number, or balance of this account. As far as I can see, those were all different accounts to this one.

Further, Hoist have provided a transaction history going back to 2008, as well as account notes going back to 2011. And both of these show that this debt was not settled in 2013 or at any other point. So as far as I can see, this account was not included in the accounts that got settled. Indeed, according to a note dated July 2013, it looks like the debt management company told C that this account was not included in the debt management plan. They said they'd speak to Mrs M about including it, but then they never got back to C. Then the debt management plan ended in August 2013, and then later the account was sold to Hoist. So it really does not look like this account got settled.

Going back to the debt management company's letter, it looks like while they did settle some accounts, they issued a "challenge" for others. Looking at the account notes here, it seems this is one of the debts they challenged instead of settled.

It looks like what the debt management company did was ask for certain documents from C. When C couldn't provide them, the debt management company then claimed the debt was unenforceable.

A debt being unenforceable usually just means that the debt owner can't take certain legal action against the customer. But the debt still exists, whether it's enforceable in court or not, and the debt's owner can still ask for repayments.

Only a court can decide whether a debt is legally enforceable or not – that's not something I have the power to determine. So I can't tell Mrs M whether this account is enforceable or not. But as above, even if this account isn't enforceable, the debt still exists, and Hoist are still allowed to ask Mrs M to repay it.

Mrs M pointed out that this debt wasn't on her credit file, and didn't come up in recent credit checks. I do understand why she thought to raise this. But her credit file only shows her last six years' worth of history. This account is from 2005 and defaulted in 2007, so it would have fallen off her credit file some years ago. That's normal. But the debt still exists and Hoist can still ask for payments, even if it's too old to still be on her credit file.

Taking all the available evidence into account, as well as the balance of probabilities, it looks like this debt was not settled in 2013 or at any other point. The debts which were settled do not match this one. It looks like Mrs M's debt management company only challenged the legal enforceability of this account, and did not clear it or settle it.

So currently, I don't think Hoist are wrong to ask Mrs M for payments here.

Our investigator gave Mrs M the details for the administrators if Mrs M would like to complain about the debt management company. I'll also send her the details for charities who can give her free help and advice about dealing with debts.

I said I'd consider anything else anyone wanted to give me – so long as I received it by 31 December 2021. But neither Mrs M nor Hoist sent me anything new to consider.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Neither side have sent me any new evidence or arguments. So having reconsidered the case, I've come to the same conclusion as before, and for the same reasons set out in my provisional decision above. That is: that I don't think Hoist are wrong to ask Mrs M for payments here.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 3 February 2022.

Adam Charles
Ombudsman